IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

JUDGMENT

1. State of Raj. & another Vs. S.N. Tiwari & others

(D.B. Civil Special Appeal (Writ) No.606/2001 arising out of S.B. Civil Writ Petition No.1663/1997)

2. State of Raj.& Ors. Vs. Shamboo Nath Tiwari

(D.B. Civil Special Appeal (Writ) No.863/2001 arising out of S.B. Civil Writ Petition No.4832/1991)

Date of Order :: 29th November, 2006

PRESENT
HON'BLE JUSTICE MRS. GYAN SUDHA MISRA
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. S.S. Sharma, Addl. G.A. for the appellants.

Mr. R.D. Rastogi)
Mr. N.S. Chauhan) for the respondents.

REPORTABLE **BY THE COURT**: (Per Hon'ble Dr. Kothari, J.)

1. These two appeals have been preferred by the State against a common judgment of learned Single Judge dated 1.6.2001 deciding two writ petitions filed by the respondent- employee.

2. The factual matrix giving rise to the present appeals as noticed by the learned Single Judge is reiterated in brief as under:-

3. The respondent employee, petitioner before the learned Single Judge (hereinafter referred to as the petitioner) was initially appointed as Investigator Gr.II by a duly constituted Selection Committee in the Department of Economics and Industrial Surveys of Government of Rajasthan. He initially resumed his duty on 27th April, 1959. The petitioner along with other similarly situated employees were declared surplus by that department and was absorbed in the year 1962 in the Directorate of Medical & Health Services, Jaipur on the post of Computer and was confirmed in 1966 on the post of Computer and working as such with the Directorate of Medical & Health Services, Jaipur. The petitioner worked as such from 1962 to 1972 and was posted as Computer with the Deputy Director, Medical & Health Services, Jaipur at ESI from 1972 to 25.10.1980. On 3.12.1980 when the petitioner was working as Statistical Inspector under Medical & Health Department vide Annexure-1 dated 3.12.1980, he was appointed on purely urgent temporary basis on the post of Homeopathic Doctor in ESI Scheme for a period of six months or till a candidate selected by RPSC or any method was available whichever is earlier vide Annexure-1 in SBCWP No.4832/1991. Vide Annexure-2 dated 6.12.1980 accordingly the petitioner the Statistical Inspector in the Medical & Health Department, Jaipur was relieved w.e.f. 6.12.1980 to join his duty in the ESI Scheme as Homeopathic Doctor and the petitioner

joined as such where he continued in that capacity for a period much more than six months uptil his retirement on 31.8.1994 on attaining the age of superannuation.

4. That Vide Annexure-12 dated 5.4.1991 of SBCWP No.1663/1997 the Directorate of Economic and Statistics Department wrote to Director of ESI Corporation, Jaipur about the petitioner Mr. Tiwari to seek his option as to whether he wanted to return back to the services of the said department and it was asked whether he was made permanent in the ESI Corporation. In response, the petitioner gave his option vide Annexure-13 dated 8.4.1991 to the Director, Directorate of Economics & Statistics in reference to the said letter Annexure-12 dated 5.4.1991 informing that his lien in the subordinate statistical services has to be maintained for protection of financial interests/ promotions to higher post of statistical services. The petitioner also referred to judgment of this Court dated 2.9.1988 in SBCWP No.162/1978 earlier filed by the petitioner. The said judgment dated 2.9.1988 is Annexure-1 in SBCWP No.1663/1997 in which this Court directed the respondents State & Directorate of Economics & Statistics Department to determine the yearwise vacancies under Rule 9 and to make promotions on the post of Statistical Inspector to Statistical Assistant in accordance with the rules on the

statement of learned Government Advocate that in view of the earlier decision of this Court construing Rule 9 in the manner sought by the petitioner, the respondents shall take steps to determine the vacancies yearwise and to make promotions accordingly. The said writ petition was thus allowed.

5. The grievance which brought the petitioner to Court again was two fold in the two aforesaid writ petitions which have resulted in two instant appeals by the State being disposed of by this common judgment.

6. The writ petition, SBCWP No.4832/1991 was filed by the petitioner with a prayer seeking the respondents (State of Rajasthan; Secretary, Labour Department; and Director, Medical & Health Services, Employees State Insurance Scheme, Rajasthan, Jaipur)to restrain them from doing away with the services of the petitioner in any manner and also restrain them from sending him back to the parent department and allow him to continue to work on the post of Homeopathic Doctor. The petitioner also prayed in the said writ petition to direct the respondent to fix his salary/ pay in the regular pay scale of the post with due benefits of revision of pay scales. He further prayed to direct the respondent to regularise the services of the petitioner from the date of his initial appointment till retirement and pay him all the arrears

of salary and other allowances.

7. On the other hand in second writ petition, SBCWP No.1663/1997 filed about 6 years after the aforesaid writ petition No.4832/1991, the petitioner came to this Court with a case seeking certain directions to the respondents (State of Rajasthan; Director, Directorate of Economic and Statistics Department and two private respondents Shri Ram Murti Singh and Smt. Illa Biswas). The petitioner prayed in this writ petition to direct the respondent Nos.1 & 2 to reconsider the case of the petitioner and recompute the vacancies from 1964 and onwards and in view of the seniority of the petitioner of 1962 and further of 1978 and 1981, the petitioner may be given all promotions, seniority, financial benefits, pay-fixation etc. from the date, his immediate juniors the private respondents have been promoted from the post of Statistical Inspector to Deputy Director. He further prayed that respondents be directed to apply the case of Shri Hero Badlani and to hold review DPC as directed in the case of Smt. Illa Biswas and consider the case of petitioner in accordance with the seniority for all promotions and pay fixation etc. The petitioner also claimed pensionary benefits at par with private respondents Shri Ram Murti Singh and Smt. Illa Biswas.

8. It appears that the petitioner saw more advantage in

holding the lien in his parent department and since he was not made permanent in the ESI Corporation, the earlier writ petition No.4832/1991 filed by him seeking regularisation there became meaningless for him and so the learned counsel for the petitioner, respondent before us also prayed that he would not press the writ petition No.4832/1991 but he submitted that the writ petition No.1663/1997 allowed by the learned Single Judge was rightly so allowed and the petitioner could claim his lien in the parent department and was entitled to be given the benefits of seniority, promotions, pay fixation and pensionary benefits etc. as allowed by the learned Single Judge and, therefore, he submitted that the appeals filed by the State Government deserve to be dismissed according to him.

9. We have heard the learned counsel for the appellant State and Mr. R.D. Rastogi, learned counsel appearing for the respondent employee, the petitioner before the learned Single Judge at length and given our thoughtful consideration to the rival submissions.

10. Learned counsel for the State urged in the first instance that the respondent employee could not be allowed to ride on two horses and his lien in the parent department of Economicis & Statistics should be deemed to have been automatically terminated once he was appointed

as Homeopathic Doctor in the ESI Corporation under ESI Scheme and Annexure-1 appointment order dated 3.12.1980 is bound to be construed as a fresh appointment order and the petitioner having continued there for a long number of years about 14 years uptil his retirement on attaining the age of superannuation, he could not be said to have still held the lien in his parent department and, therefore, comparing his case with the alleged juniors, private respondents namely Smt. Illa Biswas and Shri Ram Murti Singh was misconceived and, therefore, the learned Single Judge has erred in giving all these benefits to the respondent and the State appeals, therefore, deserves to be allowed. He drew our attention to Rule 18 of Rajasthan Service Rules which is reproduced hereunder:-

> "18. **Termination of lien**.-(a) A Government servant's lien on a post may in no circumstances be terminated, even with his consent if the result will be to leave him without a lien or a suspended lien upon a permanent post.
>
> (b) A Government servant's lien on a post stands terminated on his acquiring a lien on a permanent post (whether under the Government or Central/ other State Governments) outside the cadre on which he is borne."

11. Mr. R.D. Rastogi, learned counsel appearing for the respondent employee however vehemently opposed the submissions of learned Additional Government Advocate and

submitted that in law the lien of respondent employee continued to be with the parent department of Economics & Statistics and since the respondent was never made permanent as Homeopathic Doctor in the ESI Corporation, there was no question of his acquiring a lien in the service in the ESI Corporation nor any question of any automatic termination of his lien from the parent department could arise. He submitted that in fact a careful perusal of Rule 18(b) of RSR would show that the lien of a Government servant on a post stands terminated only upon his acquiring a lien on a permanent post whether Government or Central or other State Governments outside the cadre on which he is borne. He, therefore, urged that since the respondent had never acquired any lien on a permanent post in the ESI Corporation, the question of his termination of lien in the parent department could not arise. He further submitted that nor it was a case of transfer of lien under Rule 19 or 20 of RSR as there was no order passed to this effect by the State Government. He argued that option vide Annexure-13 dated 8.4.1991 given by him in response to option sought by the parent department was not conditional but was categoric and the respondent was clearly entitled to all consequential benefits in his parent department including the promotions qua his alleged juniors in his parent department. He further pointed out that there were various documents which showed that the parent department

continued to treat the respondent employee on their cadre like Annexure-3 seniority list published vide order dated 10.7.1978 in which name of petitioner was shown at serial No.162 and name of Smt. Illa Biswas was shown at serial No.163 and also Annexure-4 seniority list published vide order dated 4.11.1981, in which these two names appear at serial No.2 & 3 respectively.

12. Learned counsel for the respondent employee also relied upon Rule 4 of Rajasthan Statistical Subordinate Service Rules, 1971 Rules which is reproduced hereunder:-

> **"Part II**
> **Cadre**
> **4. Composition and Strength of the Service.-** (1) The nature of posts included in the Service shall be as specified in column 2 of Schedule and *includes such posts of all departments except* the Agriculture Department."

13. He, therefore, submitted that his absorption in Medical & Health Department in 1962 and confirmation in 1966 is protected by Rule 4 of 1971 Rules. Thus, learned counsel for the respondent employee submitted that the State appeals had no force and the respondent was entitled to all the consequential benefits on account of his lien in the department of Economics and Statistics which have been granted by the learned Single Judge.

14. Having heard the learned counsel at length and

having given our thoughtful and anxious consideration to the rival submissions we are of the opinion that the present appeals filed by the State have no merit and the same deserve to the dismissed.

15. The submission of the learned counsel for the respondent employee that lien of the respondent employee continued in the department of Economics & Statistics has considerable force and finds support from the aforesaid quoted rules particularly Rule 18 of RSR. His urgent temporary appointment as Homeopathic Doctor vide Annexure-1 order dated 3.12.1980 was not a substantive appointment for indefinite period and the mere fact that the respondent employee continued to work under the said order for a long period cannot ipso facto result in loss of his lien in the parent department of Economics & Statistics. No order to this effect was ever passed by any competent authority. Annexure-2 relieving order dated 6.12.1980 to allow him to join as Homeopathic Doctor cannot be construed as order terminating his lien in the department of Economics & Statistics. On the contrary, option sought from the said employee vide Annexure-12 dated 5.4.1991 clearly shows that the said parent department treated the said employee as belonging to its own cadre, particularly when the said option seeking letter is read with seniority lists Annexure-4 published by the said department on 4.11.1981 even after the

employee joined as Homeopathic Doctor ESI Corporation in 1980, clearly shows that the said employee was treated as employee borne on the cadre of parent department. The said employee gave his option and reiterated the claim of his lien vide Annexure-13 dated 8.4.1991 and urged the parent department to grant him appropriate relief in pursuance of judgment of this Court dated 2.9.1988 in the earlier writ petition filed by the petitioner for yearwise determination of vacancies and grant of all consequential benefits. Thus, the conduct of the respondent employee is above board and categoric, while inaction on the part of both the Government departments in either terminating his lien or transferring his lien to the ESI Corporation where he joined as Homeopathic Doctor and inaction on the part of the ESI Corporation to make him substantive and permanent on the said post even until 1991 clearly establishes that lien of the respondent employee was maintained in the parent department and, therefore, the respondent employee clearly becomes entitled to all the consequential benefits which would have accrued to him had he remained in the parent department and *de facto* served in the said department.

Therefore, we find no error in the judgment of learned Single Judge whereby such relief has been granted to the respondent employee and we find no force in the

present appeals filed by the State. Consequently, both the appeals are dismissed. No order as to costs.

(Dr. VINEET KOTHARI),J. (GYAN SUDHA MISRA),J.

VS/